

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In Re: : Case Nos. 08-31860
: 09-21519
:
FISCA OIL CO. and : Milwaukee, Wisconsin
STRECKRICH PETRO CORP. :
: Thursday, June 3, 2010
Debtors. :

TRANSCRIPT OF HEARING HEARD BEFORE THE
HONORABLE JUDGE PAMELA PEPPER
UNITED STATES BANKRUPTCY JUDGE

TRANSCRIPT ORDERED BY:

Jannette Florczak, Secretary
(U.S. Trustee's Office)

APPEARANCES:

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6/03/10

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(Proceedings begin at 3:13 p.m.)

THE CLERK: The Court calls the jointly administered case 2008-31860 and 2009-21519, Streckrich Petro and Fisca Oil Company.

Please state your appearances for the record.

MR. HOWELL: On behalf of Streckrich Petro Corporation and Fisca Oil Company, Attorney Patrick B. Howell. Also present with me, Your Honor, today is Owen Richelieu, Paul Streckmann, and Melinda Bialzik, the counsel for the individuals.

MR. STEUER: Robert K. Steuer on behalf of A.E. Wease Company, a creditor.

MS. SCHNEIDER: Debra Schneider on behalf of the U.S. Trustee.

THE COURT: Good afternoon to everyone.

We have several matters -- excuse me -- on the docket this afternoon. With regard to Fisca Oil, we had adjourned our hearing on the U.S. Trustee's motion to convert that case, and adjourn that until today.

And then with regard to Streckrich, we had scheduled today's hearing for approval of the disclosure statement, and a confirmation hearing on the plan.

I should note that with regard to the United States Trustee's motion to convert one of the issues, of course, was the filing of the monthly operating reports

1 in that case. And I do see that, at least, there have
2 been some filed since we last were together.

3 I also note that in Fisca, Mr. Howell filed on
4 behalf of the debtor in possession, the affidavit with
5 regard to balloting, attached the relevant ballots there,
6 indicating what classes voted, and if they did vote, what
7 those votes were. So I'm assuming that Mr. Steuer, Ms.
8 Schneider, each of you saw those?

9 MS. SCHNEIDER: Yes, Your Honor.

10 THE COURT: All right.

11 MR. STEUER: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 If we could, I'd like to take up the motion to
14 convert first, and hear from the parties as to what the
15 status of that is, and where we are on it.

16 So, Mr. Howell?

17 MR. HOWELL: As the Court has noted, since we
18 last met, monthly operating reports were filed, and
19 subsequently amended after discussions with the United
20 States Trustee regarding what they perceived to be some
21 deficiencies, and some additional information that they
22 wanted.

23 They have been filed. We believe that we've
24 complied with the majority of the concerns that the U.S.
25 Trustee has. I think, with reports of those magnitude

1 are not always going to hit the ball squarely, but I
2 believe that we have substantively and substantially
3 complied with the operating report requirement.

4 As to the fees, the Court may recall that we
5 had an overpayment in Streckrich, an underpayment in
6 Fisca. A request was made to balance those items out.
7 They -- in fact, the United States Trustee's Office did
8 make such reimbursement and application from Streckrich
9 to Fisca. So that's been satisfied. And this afternoon,
10 Mr. Richelieu brought a check which represents the
11 disbursements through May -- through June 30th.

12 THE COURT: June 30th. Okay.

13 MR. HOWELL: And that's been delivered to the
14 United States Trustee's Office. So I've not received
15 word that the U.S. Trustee's Office is withdrawing their
16 motion. I believe that we've complied, however.

17 THE COURT: Okay. Thank you, Mr. Howell.

18 Ms. Schneider?

19 MS. SCHNEIDER: Your Honor, there have been
20 amended reports that have been filed. We still have
21 mathematical issues with them. However, we would like to
22 table our motion to convert, and see if this case can be
23 confirmed. And so if we can set that aside, and if the
24 case can be confirmed, we don't want to stand in the way
25 of confirmation. UST fees have, in fact, been paid. The

1 check was handed to Ms. Saladin of our office earlier.

2 THE COURT: Okay. All right. Thank you, Ms.
3 Schneider.

4 Mr. Steuer, any oar in the water with regard to
5 this issue?

6 MR. STEUER: No, Your Honor.

7 THE COURT: All right.

8 All right. Well, given that, then let's turn
9 to the motion to approve the disclosure statement, and
10 the confirmation hearing.

11 The debtor in possession provided parties of
12 interest with a deadline by which to file any written
13 objections to the disclosure statement, or the
14 confirmation of the plan. I note that when I checked the
15 docket, there were no such objections that I saw. So as
16 far as I'm aware, there have not been any filed.

17 Mr. Howell, I know that you've been in ongoing
18 discussions with the United States Trustee, with Mr.
19 Steuer, with regard to any perhaps informal communication
20 they may have wished to have. So is there anything that
21 you'd like to address in that regard?

22 MR. HOWELL: As to the disclosure statement,
23 the amended disclosure statement, Your Honor, there have
24 been no objections, no input, no suggestions for change
25 to the disclosures that were made from creditors that

1 aren't appearing here today, or from Mr. Steuer, or the
2 U.S. Trustee's Office.

3 As to the amended plan of reorganization,
4 again, as the Court noted, no formal objection has been
5 filed by any creditor. My discussion with Mr. Steuer
6 would indicate that his client does not have an
7 objection.

8 The Court -- my discussions with Ms. Schneider
9 indicate an issue with respect to two late filed claims
10 are matters about which we need to engage the Court in a
11 discussion and see where we are with respect to the plan
12 of confirmation. No plan of reorganization. No formal
13 objection has been raised by the United States Trustee.
14 Ms. Schneider has asked me to think about how we want to
15 deal with two past claims. And if I may, I'm happy to
16 disclose where we're at on this.

17 THE COURT: Okay. Thank you. Let me come back
18 to that in just a minute, Mr. Howell. I hope that the
19 discussion you want to engage me in doesn't recall --
20 require me to like actually function at any level. My
21 brain feels like I'm walking on the bottom of the ocean.
22 It's what comes with having an eight-year-old who comes
23 home with every disease on the planet, and then a week
24 later, I have it. He doesn't get bothered by it, but I,
25 on the other hand, am felled like a great oak in the

1 forest.

2 Mr. Steuer, with regard to the disclosure
3 statement. Any issues or concerns?

4 MR. STEUER: No issues at all, Your Honor.

5 THE COURT: And, Ms. Schneider, with regard to
6 the disclosure statement?

7 MS. SCHNEIDER: No issues with the disclosure
8 statement.

9 THE COURT: All right.

10 Given that then, and having reviewed -- I'm
11 sorry. And I should say the amended disclosure
12 statement. I do recall that this was the one that was
13 amended after our earlier discussions. I will approve
14 the amended disclosure statement, as filed.

15 With regard to the plan, the proposed amended
16 plan, Mr. Steuer, on behalf of A.E. Wease, any objection?

17 MR. STEUER: There is none, Your Honor.

18 THE COURT: Thank you.

19 Okay. That being said -- and I think all that
20 leaves us then is this issue.

21 Mr. Howell, Ms. Schneider, what's going on?

22 MR. HOWELL: In light of the Court's cold, be
23 sure -- be sure to stop me if I'm unintelligible and --

24 THE COURT: If I need it to be repeated eight
25 times? Yes.

1 MR. HOWELL: Right. Mr. Steuer will stop me
2 almost immediately, if that's the rule. I understand,
3 but --

4 THE COURT: Thank you. I'll have Mr. Steuer's
5 assistance in that regard.

6 MR. HOWELL: We have two claims that were filed
7 by taxing authorities since May 1st, 2010. The first
8 claim was filed by the Ohio Department of Taxation, for
9 approximately 27,500. That claim is for franchise tax
10 assessments for a period which predate the petition by 40
11 some days, and for a period after the petition, until
12 June 30th, 2009.

13 So the Ohio Department of Taxation filed a
14 claim with -- which bridges the Fisca petition date. As
15 a result, we have an unsecured priority tax claim as part
16 of this late filed claim, and an administrative claim
17 that needs to be addressed. The debtor has objected to
18 this claim on a number of bases, and a hearing is set for
19 this court on July 7th, I believe, with respect to this
20 claim.

21 THE COURT: Those were filed at Fisca, right?

22 MR. HOWELL: Yes.

23 THE COURT: Okay.

24 MR. HOWELL: Yes.

25 THE COURT: That's what I thought because I was

1 first looking at the claims registered in Streckrich, and
2 then I remembered seeing objections to this one.

3 MR. HOWELL: So as to the Ohio Department of
4 Taxation, they filed a claim. We've objected to it. The
5 hearing is coming on. But, as Ms. Schneider points out,
6 the debtor now has a claim which is really of two
7 components. One that can be treated under a five-year
8 rule with respect to 11:29A-9(c), and that's the pre-
9 petition part.

10 And the post-petition part, as an
11 administrative claim, Ms. Schneider takes a position that
12 it must be paid upon the effective date, unless the
13 claimant agrees otherwise. While I think that having the
14 objection, and having the plan terms that call for
15 payment upon a court order with respect to that claim, I
16 believe that we've reached a resolution about how we're
17 going to proceed with this.

18 And so there is in my trust account,
19 approximately -- or will be, by the end of the day,
20 \$324,000, representing the sale of property that's
21 occurred last fall and, again, probably a closing that
22 occurred yesterday or today, with respect to Joplin,
23 Missouri property.

24 Of this money that I have, it is the debtor's
25 proposal to take the amount of the alleged Ohio

1 Department of Taxation claim, and set it aside, and not
2 distribute it until there's a resolution of the Ohio
3 Department of Taxation claim.

4 THE COURT: The entire amount of the claim?
5 The twenty-seven-five?

6 MR. HOWELL: That is our proposal. I think
7 part of it's pre-petition, but I -- it would be a
8 mathematical calculation to figure out, on a per diem
9 basis, which is which. So I'm just proposing --

10 THE COURT: Yeah.

11 MR. HOWELL: -- to set the whole thing aside.

12 THE COURT: I didn't know if you had done that,
13 or if you had a sense of --

14 MR. HOWELL: I --

15 THE COURT: -- what belongs where. Okay.

16 MR. HOWELL: Based on the claim as filed. And
17 so, in order to ameliorate any concerns about whether
18 sufficient sums were set aside, or available to pay upon
19 the determination of whether the claim is valid or not,
20 the debtor is proposing to set aside the entire amount.

21 As to the pre-petition unsecured priority
22 claim, that would fall into what I have denominated as
23 Class 3 of the debtor's plan. It's set forth on Page 3
24 of the disclosure statement, Judge, if you have it.

25 THE COURT: Thank you.

1 MR. HOWELL: It's a chart, I believe.

2 THE COURT: Uh-huh.

3 MR. HOWELL: And that chart was prepared when
4 these -- before these claims were filed.

5 THE COURT: Right.

6 MR. HOWELL: And so what the debtor proposes to
7 do is to amend the plan, as to Class 3, to allow for the
8 payment of the claim, pursuant to 11:29A-9(c), the five-
9 year rule, and give the Department of Taxation of Ohio
10 exactly what it's entitled to, under the code, should
11 they have a claim that's allowed.

12 And so, I think, with the Court's permission,
13 we'll amend the plan, and I guess we can get to this
14 later. But I think we need to amend the plan to deal
15 with the claim that we don't believe we're ever going to
16 have to pay, but which is, nevertheless, out there.

17 As to the post-petition amounts, since Class 1
18 already contemplates they're going to be paid pursuant to
19 the terms, I don't think any reorganization -- excuse me
20 -- modification of the plan is necessary, as to Class 1,
21 should any part of the Ohio taxation claim fall into
22 Class 1.

23 THE COURT: Okay. I got you so far.

24 MR. HOWELL: Okay. Thank you.

25 Now I want to move to the Internal Revenue

1 claim, which was a much larger claim, \$451,000. And that
2 came in after the plan was filed as well. And it is a -
3 - an alleged tax from 2006, even before Messrs. Richelieu
4 and Streckmann bought this company. And the debtor has
5 objected to that claim. Again, we have a July 7th
6 hearing date. And because it's an unsecured priority tax
7 claim, it falls into Class 3, subject to the five-year
8 rule, which provides another reason why I need to amend
9 the plan as to Class 3 only, to allow for treatment under
10 the code, as to what I suggested.

11 Now the -- as Mr. Richelieu's testimony will
12 eventually demonstrate, even if the Court should allow
13 these claims, we have property values sufficient in the
14 sales to cover all of these claims. We don't believe
15 they're allowable, but we have -- as to the feasibility
16 issue, which we'll get to in testimony, I believe that we
17 can handle that. This particular tax started in 2006,
18 when the Social Security Administration doubled up, by
19 accident, the amount of employment -- amount of wages
20 paid by the then Fisca. They doubled up the taxes. The
21 passed that mistake on to the IRS. Eventually four years
22 later, the IRS picked it up through their machines, and
23 assessed this liability.

24 The Social Security Administration has already
25 written the debtor, in a writing that said that's a

1 mistake. We fixed our records. We've sent them on to
2 the IRS. Mr. Val Thomas of the IRS said he sent it on to
3 his organization and the right department. In due
4 course, it may very well resolve itself. But I can't
5 wait. I object. And so this matter is going to be
6 moving on before the Court.

7 So we don't think we have any of these
8 liabilities, Judge. But in case we do, I think we need
9 to modify Class 3, to allow for the five-year treatment.
10 What I would propose is that the order -- the Court issue
11 an order -- if I can get through all the other hurdles of
12 getting this plan confirmed -- that an order be issued
13 authorizing the carve out of 27,500 set aside, that the
14 plan be amended as I've indicated to you. That I provide
15 21-day notice to creditors, if they have any objection,
16 and absent any objection, an order confirming the plan
17 would then be entered, rather than having another
18 confirmation hearing.

19 I think there are more expeditious ways, but
20 I'm not sure they'll satisfy the notice and disclosure
21 requirements, the United States Trustee, and the Court.
22 So that's the issue that Ms. Schneider have been
23 wrestling with all of this week, and that's the
24 resolution we propose.

25 THE COURT: Okay. All right. Thank you, Mr.

1 Howell.

2 Ms. Schneider?

3 MS. SCHNEIDER: I was thinking that Mr. Howell
4 has laid it out pretty clearly. The aspect -- what the
5 question was is how is he going to meet the requirements
6 of 11:29A with these tax requirements, and the post-
7 petition, it's our position that he has to comply with
8 11:29A-9(a), and then the pre-petition, of course, he's
9 going to handle under Sub C.

10 So with that amount being set aside, I believe
11 that he should be able to satisfy the requirements of
12 11:29, and that confirmation shouldn't be held up,
13 assuming all the other requirements can be met.

14 THE COURT: Right. Okay. All right.

15 So setting this money aside then, the real
16 issue, quite frankly, it seems, is whether or not it's
17 appropriate to do this by negative notice, with these two
18 changes. I mean, I say two changes. I really mean one
19 change because all you're really amending is Class 3, and
20 then the numbers in Class 3, but that change to take into
21 account these two claims, without having to come back and
22 have another hearing in the absence of an objection.

23 Okay. All right.

24 Mr. Steuer, any issues?

25 MR. STEUER: No, Your Honor. We feel this is

1 an appropriate way to resolve this issue.

2 THE COURT: Okay. Thank you.

3 All right. I would, if it's all right, Mr.
4 Howell, I would appreciate hearing a little bit from Mr.
5 Richelieu. I kept up, to some extent, with the
6 properties that have been for sale, and not for sale,
7 which ones have been sold, and which ones haven't I know
8 there have been funds in the trust account, at various
9 and sundry times.

10 If I could just hear a little bit from Mr.
11 Richelieu with regard to what remains to be sold, what
12 has been recouped thus far, where those funds are, and
13 what we hope for in the future.

14 MR. HOWELL: And with the Court's further
15 permission, I would like to take Mr. Richelieu then
16 through the 11:29A requirements, with respect to the plan
17 of confirmation.

18 THE COURT: While you're at it.

19 MR. HOWELL: Yes.

20 THE COURT: Yes. Okay. All right.

21 Mr. Richelieu, if you'll step up, Ms. Bennett
22 (phonetic) will swear you in.

23 O W E N R I C H E L I E U, DEBTOR, SWORN.

24 THE COURT: Come on up and have a seat, Mr.
25 Richelieu.

1 MR. HOWELL: With the Court's permission, I
2 will give Mr. Richelieu a copy of the plan (inaudible).

3 Which you have already?

4 THE WITNESS: I already have it.

5 DIRECT EXAMINATION BY MR. HOWELL:

6 Q Can you tell us your name please?

7 A My name is Owen H. Richelieu, III.

8 Q And what is your relationship with the debtors
9 in this proceeding?

10 A I am a member of the Board of Directors of
11 Streckrich Petro Corporation, a member of the Board of
12 Directors of Fisca Oil Co. Inc. I am a Vice President of
13 Streckrich Petro Corporation, and a Vice President of
14 Fisca Oil Co. Inc.

15 Q And are you familiar with the operations,
16 structure, ownership, and all matters necessary for the
17 operation of these businesses?

18 A I am.

19 Q Who else serves as an officer, director, or
20 employee?

21 A Well, I couldn't list all of the employees, but --

22 Q Who else as an -- who else serves as an officer
23 and director?

24 A The sole other officer and director of both of the
25 debtors is George Paul Streckmann, and of Fisca Oil

1 Company, Sean Brown is a Vice President of Operations.

2 Q Are you and will Mr. Streckmann, Mr. Brown, and
3 yourself remain in those positions as you've described
4 them after a plan is confirmed, if the Court so does so?

5 A We will.

6 Q Are you familiar with the disclosure statement
7 and plan of reorganization filed in these proceedings?

8 A I am.

9 Q And were those documents prepared with your
10 assistance and with your direction?

11 A Yes.

12 Q And provided information that you provided to
13 counsel? Did --

14 A Yes.

15 Q -- it? Describe generally the outline of this
16 plan of reorganization for these entities.

17 A Well, I think that we all will recall that the
18 genesis of this bankruptcy proceeding for both companies
19 was not anything that resulted from operational
20 difficulties or anything relating to the routine
21 operation of the business, but with our inability to
22 satisfy a shareholder note that came due from the selling
23 family. And so our intention, all along, has been to
24 protect Mr. Streckmann and my equity investment, and to
25 repay all creditors 100 cents on the dollar from the get-

1 go.

2 Q Do -- are there any unsecured -- or very many
3 unsecured creditors of Fisca?

4 A No.

5 Q Why not?

6 A Because we have routinely always paid our bills.

7 Q What was the role of Mr. Steuer's client, A.E.
8 Wease, through this proceeding?

9 A A.E. Wease, historically, has been a major supplier
10 of Fisca Oil and, similarly, Fisca Oil has been, I know,
11 at times, the single largest customer of the A.E. Wease
12 Company. Our relationship with A.E. Wease, both at a
13 corporate level and at a personal level, is one that I
14 would characterize as very close. The president of A.E.
15 Wease and I probably speak on the phone at least three,
16 and sometimes as many as ten, times a week. He has, on
17 occasion flown up to Milwaukee to meet with us up here.
18 We have gone down to St. Louis to meet with him down
19 there. They have always been a tremendous asset to us
20 during this difficult time. They, themselves, have gone
21 through Chapter 11 in the early '90s, and lived to tell
22 the tale.

23 Q You know that the plan identifies a class as
24 the November 2009 administrative claims.

25 A Yes.

1 Q Can you briefly tell us, for the record, how
2 that class of claims came about?

3 A We will all recall that when Fisca and Streckrich
4 entered into their global settlement agreement to end the
5 Hudson litigation, the effective time of that agreement,
6 where we cleaved part of the company off, and gave it
7 back to the Estate of M.R. Hudson, and the Hudson
8 Foundation. There was, obviously, a great deal of
9 activity going on, both at the Milwaukee corporate office
10 and the Kansas City corporate office, especially since
11 the Kansas City corporate office was going to revert to
12 the control of the Hudson Foundation. The -- while I am
13 not privy, directly, to what conversations were going on
14 on the Hudson side, with people who were, prior to
15 November 20, employees of Fisca Oil, and who, subsequent
16 to November 20, would not be employees of Fisca Oil
17 anymore, the general instruction, I'm sure, was make sure
18 that Fisca doesn't owe anything when we take these
19 locations back. And I think that, rightly so, that was -
20 - that was fine. We get to the November 20 settlement
21 date. We had a big chunk of the company back to the
22 Hudson family, continue with our much smaller operations
23 and because there is this tremendous outflow of cash,
24 immediately proceeding the November 20 hand back, we get
25 to November 21, and my liquidity -- or the company's

1 liquidity is a completely different animal than it was on
2 November 19th.

3 Q Have you been in contact with these various
4 creditors that we now designate as the November 2009
5 administrative claims?

6 A Every single one.

7 Q And have you explained to them the situation
8 how this arose?

9 A I have.

10 Q You heard -- did you hear then, before you took
11 the stand, the discussion regarding the Ohio Department
12 of Taxation and the Internal Revenue Service, and what is
13 proposed with respect to this plan of reorganization, and
14 its modification?

15 A Indeed.

16 Q And does the debtor agree with the proposals
17 that we've put forth on this record today?

18 A Completely.

19 Q To your knowledge, Mr. Richelieu, is the plan
20 proposed and included -- and including this requested
21 amendment, does that plan comply with all the applicable
22 provisions of the United States Bankruptcy Code?

23 A Based on the advice of counsel, I believe that it
24 does.

25 Q And to your knowledge, have the debtors, that

1 is Streckrich and Fisca, complied with the applicable
2 provisions of the bankruptcy code?

3 A Yes.

4 Q You've paid the U.S. Trustee fee through June,
5 correct?

6 A For both debtors.

7 Q And you understand that until such time as
8 there is a final decree closing cases that there will be
9 continuing obligations to the United States Trustee's
10 Office?

11 A Yes.

12 Q Is the plan, as proposed for both of these
13 debtors, presented, in your knowledge, in good faith, and
14 not by any means forbidden by law?

15 A Certainly, to my knowledge, it is in good faith, and
16 based on the advice of counsel, I believe it complies
17 with the applicable statutes.

18 Q Should this plan be confirmed, will the debtor
19 make the payments required under the plan?

20 A Absolutely.

21 Q With respect to the compensation of both you
22 and Mr. Streckmann, have either of you been paid since
23 the petition date -- paid a wage since the petition date
24 for Streckmann, in late October 2008 -- or Streckrich?

25 Excuse me.

1 A No.

2 Q And as you go forward, is there any budgetary
3 analysis that allows you and Mr. Streckmann to get paid
4 prior to getting all these creditors paid?

5 A No.

6 Q To the extent that any agencies of the
7 government control, regulate, or otherwise provide
8 instruction about how to operate a fuel station, and a
9 convenience store, will you comply with those rules?

10 A Absolutely.

11 Q Now you know that certain ballots were sent out
12 to creditors in this proceeding?

13 A Yes.

14 Q And you know that acceptances were asked of the
15 November 2009 administrative claims, correct?

16 A Yes.

17 Q And that a report consisting of an affidavit of
18 myself, regarding the balloting and acceptance has been
19 filed with the Court, correct?

20 A Yes.

21 Q Did any creditor that submitted and returned a
22 ballot or acceptance reject the plan as proposed?

23 A No.

24 Q Of those that did return ballots then, were a
25 hundred percent in favor of the plan?

1 A All creditors that we polled were in favor of the
2 plan as proposed.

3 Q The Class 3 that we've talked about already,
4 regarding allowed priority claims, when the plan was put
5 together, was the debtor aware of either the Department
6 of Ohio -- the Ohio Taxation Department's claim, or the
7 IRS amended claim?

8 A No, those claims were both received in May, and I
9 believe that we filed the plan April 29th.

10 Q Are you asking authority and permission from
11 this Court to amend the plan accordingly to allow for the
12 treatment of these tax claims, should any amount be
13 allowed?

14 A Yes.

15 Q And do you understand that as to pre-petition
16 tax liabilities, the Bankruptcy Code allows and mandates,
17 rather, that those tax liabilities be paid in equal
18 installments, over a five-year period from the date of
19 the petition?

20 A I do.

21 Q And to the extent that the Department of
22 Taxation of Ohio has an allowed post-petition claim, it
23 needs to be paid right away?

24 A Correct.

25 Q Upon any order approving and allowing the

1 claim?

2 A Correct.

3 Q All right. Now there's an administrative class
4 of claims that include your attorneys, correct?

5 A Yes.

6 Q And have your attorneys agreed -- made an
7 agreement with the debtors with respect to their payment?

8 A To the best of my knowledge, we have an agreement.

9 Q And you understand that there are funds being
10 held by firm's trust account that were paid prior to the
11 petition dates of each of these debtors?

12 A Yes.

13 Q And that if allowed, in an eventual hearing
14 seeking approval of these professional fees, that the
15 amounts that were paid in advance, and on retainer, would
16 be applied against the amounts allowed?

17 A I do.

18 Q And should there be any amount remaining after
19 the allowance of the retainer, any amount owing to the
20 firm will be rolled into the payments to the
21 administrative class, on a going forward basis?

22 A Yes.

23 Q And do you also understand that your counsel's
24 payment can only be asked to pro -- paid pro rata only
25 after this class is paid -- is paid more than 50 percent

1 of its current claim?

2 A I do understand.

3 Q And do you agree with that?

4 A I think it is most equitable.

5 Q As to other post-petition operational expenses,
6 are they paid current, or within terms?

7 A To the best of my knowledge, yes.

8 Q With respect to taxes, Mr. Richelieu, that have
9 accrued, post-petition, but for the Department of Ohio,
10 do you understand that the tax liabilities are paid --
11 that are due are paid, and your taxes are current?

12 A Based on my latest conversations with Mr. Thomas, at
13 the IRS, I believe that to be the case.

14 Q Now will the confirmation of the plan, if
15 authorized by the Court, be followed by -- or likely to
16 be followed by the liquidation or the need for further
17 financial reorganization of either Fisca Oil, or
18 Streckrich Petro?

19 A I do not believe so.

20 Q Now the payments under the plan are derived
21 from what source, Mr. Richelieu?

22 A The liquidation of nonoperating assets of the Fisca
23 Oil Company.

24 Q Are those assets -- well, are all the real
25 estate assets identified at Page 3 of the disclosure

1 statement?

2 A Yes.

3 Q And does this list include not only operating
4 locations, but also nonoperating locations?

5 A Yes.

6 Q For our purposes here, Number 5, Alexandria,
7 Missouri, at the time the plan was filed, and disclosure
8 statement, was operating, correct?

9 A Yes.

10 Q And Number 13 -- no, I'm sorry. Number 12,
11 Asbury, is -- was operating, and continues to operate,
12 correct?

13 A That is correct.

14 Q Now why is Alexandria temporarily closed?

15 A The Alexandria, Missouri location sits on a bluff at
16 the intersection of the Mississippi and Iowa Rivers on
17 the border of Iowa. And during the past month, due to
18 heavy rainfall in that area, the risk of flooding of that
19 location, has -- we have perceived to be significant.
20 Two years ago, the station went under water. Seven years
21 ago, the station went under water so quickly that the
22 employees were running out of the store. So in both an
23 effort to protect the location, provide for the safety of
24 the inventory and, certainly, to provide for the safety
25 of employees, we have temporarily closed that location

1 during this period of flood danger.

2 Q Has the fuel been taken out of the ground?

3 A Yes.

4 Q Have the twinkies been taken off the shelves?

5 A They have.

6 Q And the beer taken out of the refrigerator?

7 A Yes.

8 Q It's an empty store?

9 A It is an empty store.

10 Q Is there any possibility that this property
11 could be sold to a third party?

12 A Yes.

13 Q And is there activity going on that it might be
14 sold?

15 A I have had numerous discussions with numerous
16 interested parties in acquiring that piece of real
17 property.

18 Q And would the debtor contemplate the sale of
19 the Alexandria, Missouri property in conjunction with its
20 operations on a going forward basis, and as necessary to
21 satisfy the plan requirements?

22 A Absolutely.

23 Q Now the other stores, apart from Asbury, Number
24 12, these are closed stores?

25 A That is correct.

1 Q And are any of these being actively marketed at
2 this point?

3 A Yes.

4 Q Which ones?

5 A Store No. 1, St. Charles, Missouri; Store No. 4,
6 Abilene, Texas; Store No. 11, Lima, Ohio; and Store No.
7 13, Joplin, Missouri, is under contract for sale, and
8 that transaction is either -- either closed yesterday
9 afternoon or today.

10 Q And those proceeds will be wired to my firm's
11 trust account, correct?

12 A That is correct.

13 Q Would -- are these properties that are closed
14 under some environmental watch list, or clearance for
15 sale to third parties because of their former use as fuel
16 stations?

17 A Some of the locations are not immediately saleable,
18 as we are implementing a plan of environmental
19 remediation. Those plans of environmental remediation
20 are being administered both by the company and the
21 relevant state regulatory authorities, and as those
22 remediation plans are completed, then those properties
23 will be available for sale.

24 Q How did you arrive -- and how did the debtor
25 arrive at the values that are identified in this

1 disclosure statement for all of the properties, Mr.
2 Richelieu?

3 A When current ownership acquired the company, we had
4 appraisals by a qualified national appraisal firm
5 performed on each of the real property assets of the
6 company. In connection with putting this plan together,
7 we began with those figures. We then surveyed local real
8 estate brokers in each of these markets to discuss with
9 them what a potentially more realistic or current market
10 value of the real properties would be, in an attempt to
11 determine, honestly, where we were with what kind of
12 proceeds could we realize if we started an aggressive
13 program of asset disposition. And, obviously, then that
14 current estimated market value is, in most instances,
15 significantly less than the 2007/2008 appraisal values.
16 But we believe that, in most instances, our current
17 market estimated value is an accurate representation of
18 the current market value of these real properties.

19 Q And you, on behalf of the debtor, believe that
20 the values that are set forth in the disclosure statement
21 represent a reasonable fair market value for which Fisca
22 will receive in the sale of these properties?

23 A To the best of my knowledge, yes.

24 Q Based on the fact that you have these
25 properties, and some of them are for sale, and their

1 anticipated fair market value in sales prices that you
2 just testified, do you believe that the debtors can make
3 the payments on allowed claims, as set forth in the plan
4 of reorganization?

5 A I absolutely do.

6 Q Now if these tax claims are allowed in full
7 -- I think we have \$451,000 to the IRS, and \$28,000 to
8 the Department of Taxation in Ohio, do you still believe,
9 if you add in an additional \$500,000, approximately, that
10 there is sufficient property values to satisfy these
11 claims, if these tax claims are allowed?

12 A With about a 20 percent cushion.

13 Q Now let me see if I got -- I want to make sure
14 that we're okay with the numbers. The administrative
15 claims, as identified in the plan and in the disclosure
16 statements are about \$418,000, correct?

17 A That is correct.

18 Q The A.E. Wease claim is identified as \$300,000,
19 correct?

20 A That is correct.

21 Q And if I assume there are some fees that get
22 rolled in after the application of the retainer amount,
23 you and I have used a number of \$144,000 as a potential
24 remainder of what's due the firm, correct?

25 A That is correct.

1 Q And so, given those numbers, what's the total
2 amount of the claims, without the tax authorities?

3 A \$858,005.

4 Q All right. Now in my firm's trust account,
5 there's some money from the Blue Summit sale, correct?

6 A That is correct.

7 Q It's approximately \$101,000.

8 A That is correct.

9 Q So that would be a deduct off the amounts that
10 we've just talked about, right?

11 A That is correct.

12 Q Resulting in about \$747,000?

13 A That is correct.

14 Q Now I want you to assume that the tax
15 liabilities, despite the debtor's objections, are allowed
16 in full, and so you add approximately \$500,000 to the
17 balance you and I just came up with. What's the total
18 amount that's due under the plan?

19 A The total plan payments, in that instance, would
20 then be approximately 1.25 million.

21 Q And you have identified what as the total value
22 of all of the properties for Fisca?

23 A Approximately \$1.7 million.

24 Q Are you prepared to do what's necessary,
25 selling the properties in order to get these creditors

1 paid in full?

2 A Absolutely.

3 Q Do you think, Mr. Richelieu, that you, Mr.
4 Streckmann, and the employees that you have, can make
5 this plan work so that Fisca continues to operate and
6 viable company, and Streckrich continues its situation as
7 the holding company?

8 A I absolutely do. We are both confident in existing
9 management. We have received unbelievable support from
10 our creditors. We have a very committed group of
11 employees. I think that we can implement -- complete the
12 implementation of this plan, in short order,
13 successfully, and do what we always said we were going to
14 do, which is pay everybody 100 cents on the dollar. And
15 I think that we're going to do that sooner, rather than
16 later.

17 MR. HOWELL: I think I've made it through
18 11:29, Judge.

19 THE COURT: Hold on just one second.

20 MR. HOWELL: Subject to someone telling me I
21 didn't.

22 THE COURT: 13?

23 MR. HOWELL: Pardon me? 13?

24 THE COURT: There may not be any.

25 BY MR. HOWELL:

1 Q Does Fisca have any retiree benefits that it's
2 obligated for?

3 A No.

4 THE COURT: Thank you. Not to be picky.

5 BY MR. HOWELL:

6 Q Are there any domestic support obligations that
7 Fisca somehow, some way, is obligated for?

8 A Some of our employees may be subject to child
9 support or other payments being withheld from their
10 paychecks, as a result of some either court or
11 administrative body's order. We comply with those orders
12 and remit those funds to the relevant authority for
13 eventual distribution to the final recipient.

14 Q When these properties are sold, is it -- doe
15 the debtor intend to transfer these properties in
16 accordance with any applicable provisions of the law of
17 the jurisdiction in which these properties are located,
18 including any environmental laws?

19 A Absolutely.

20 THE COURT: Mr. Richelieu, can I just ask one
21 question. With regard to the Joplin property that was
22 closing either yesterday or that is in the process of
23 closing today, the amount -- the current estimated market
24 value that's listed on Page 3 of the disclosure statement
25 is \$245,000, and I think I heard Mr. Howell make some

1 reference to what you anticipated to have come in to his
2 trust account over the next few days, is that the amount
3 that you're anticipating?

4 THE WITNESS: No, the final contract sales
5 price on that property was \$240,000.

6 THE COURT: Okay.

7 THE WITNESS: We had a backup offer on that
8 property of \$250,000. At a prior hearing, appointing
9 -- authorizing us to sell that property and appointing
10 the broker, the -- there was a six percent commission
11 included --

12 THE COURT: I remember there being a
13 commission.

14 THE WITNESS: There are some other title
15 company costs, and escrow costs, and whatnot. We
16 anticipate that the net proceeds from that sale is
17 approximately 223,000.

18 THE COURT: Okay. All right. Thank you.

19 All right. Sorry.

20 Mr. Steuer, questions for Mr. Richelieu?

21 MR. STEUER: Just a couple.

22 CROSS-EXAMINATION BY MR. STEUER:

23 Q What's the status of the closing on St.
24 Charles?

25 A The buyer on the St. Charles property has been

1 unable to secure financing from their bank.

2 Approximately two weeks ago, the broker representing the
3 buyer contacted me and asked if we would be willing to
4 entertain providing seller financing for the sale of that
5 property, with some down payment. Mr. Streckmann and I
6 discussed it. Mr. Streckmann and I discussed the matter
7 with Mr. Howell, and we decided that it was in the best
8 interest of both the Fisca Oil Company and our creditors
9 to move on to another buyer who could more expeditiously
10 provide us with the funds, rather than potentially get
11 into a situation where we were having to foreclose, and
12 where we would be unable to remarket the property.

13 Q So as of now, that property is relisted, and
14 there's no sale imminently?

15 A That is correct. However, there -- on that
16 particular asset there is fairly high -- what I would
17 characterize as fairly high level of interest.

18 Q I just had one other topic I wanted to clarify.
19 Class 1 is allowed administrative convenience expense
20 claims. Those are your attorney's fees and your post-
21 petition expenses, right?

22 A Yes.

23 Q Okay. And as I understand it, A.E. Wease has
24 some money coming in that. When would they expect
25 payment of that?

1 A (No verbal response)

2 Q It says here, "paid in full by their terms, or
3 as allowed by order of the court."

4 A Well, I think that the plan contemplates that those
5 are going to be paid over some period of time, as we have
6 the availability of the funds from the asset dispositions
7 to be able to take care of those. I hope that that is --

8 Q I -- it's my understanding they have to be paid
9 within a short period of time.

10 A And that's what we fully intend.

11 Q So I could advise them that they can anticipate
12 being paid shortly after the plan is confirmed?

13 A Yes, and as I had a conversation with your client
14 this morning, and that was -- that was what we were
15 discussing.

16 Q I just wanted to confirm that on the record.
17 Thank you.

18 A That's fine.

19 MR. STEUER: That was all.

20 THE COURT: Thank you.

21 Ms. Schneider?

22 CROSS-EXAMINATION BY MS. SCHNEIDER:

23 Q Mr. Richelieu, on the St. Charles property, are
24 they seeking -- the people that put in the offer the
25 first time, are they seeking additional financing, or

1 other sources? Are they -- is their offer still a
2 possibility?

3 A I don't believe so. I think that they, to the best
4 of my knowledge, based on the representations that both
5 our broker and their broker have made to me, they sort of
6 pulled every lever they could, and couldn't make it
7 happen. So we think it best, rather than --

8 Q Continuing --

9 A That we would continue to market the property. If,
10 however, they were to show up tomorrow with \$225,000, I
11 can assure that we would not turn that offer down.

12 Q And was that the amount of their offer?

13 A I want to say yes, but I think it actually may have
14 been a little bit more. I can get you the exact number,
15 if you'd like.

16 Q The other question that I had for you is the --
17 the April -- we talked about this before, but I'd like
18 your testimony on it.

19 A Yes.

20 Q The April monthly operating report shows unpaid
21 post-petition taxes.

22 A Yes.

23 Q And those were paid during the month of May?

24 A Yes. Excuse me. Based on my discussions with Val
25 Thomas, the IRS agent in the insolvency unit, that is

1 supervising the tax aspects of both the Streckrich Petro
2 Corporation and Fisca Oil Co., he represented to me that
3 their system is showing that we are actually to the
4 positive and have potentially deposited as much as 15,000
5 to \$20,000 in excess of the depository requirements for
6 the 941 withholding taxes. And so what he and I
7 discussed, and what the intention of the company is that
8 we'll sort of reconcile that when we do the second
9 quarter 941 for 2010.

10 THE COURT: When did he make that
11 representation to you?

12 THE WITNESS: In the conversation -- the tail
13 end of last week, or Tuesday morning.

14 THE COURT: Okay. So in the last few days?

15 THE WITNESS: Yeah. Yeah.

16 BY MS. SCHNEIDER:

17 Q So those post-petition taxes that are reflected
18 in the April monthly operating report have, in fact, been
19 paid?

20 A Yes.

21 MS. SCHNEIDER: Nothing further.

22 THE COURT: Okay.

23 Mr. Howell, any followup questions for Mr.
24 Richelieu?

25 MR. HOWELL: No, Your Honor.

1 THE COURT: Okay.

2 Thank you, Mr. Richelieu. You can go back and
3 have a seat.

4 THE WITNESS: Thank you.

5 (Witness excused)

6 THE COURT: All right.

7 Mr. Howell, based on the testimony that I've
8 heard today, it appears to me that Mr. Richelieu has
9 testified with regard to all of the factors listed and
10 necessary for confirmation under 11:29A, with one
11 exception, and that is that the plan, the amended plan,
12 as it now stands, may not be in compliance with 11:29A-9,
13 given tax claims that have come in. And I understand
14 what is being proposed there.

15 Based on the testimony that you have heard, Mr.
16 Steuer, any objection to confirmation of this plan, and
17 if so, on what basis?

18 MR. STEUER: No objection, Your Honor. We --

19 THE COURT: Thank you.

20 MR. STEUER: -- would urge confirmation.

21 THE COURT: Thank you.

22 All right. Ms. Schneider, any objection to
23 confirmation of the plan, given the tax claims that we've
24 discussed, and if so, on what basis?

25 MS. SCHNEIDER: No, Your Honor.

1 THE COURT: All right.

2 I believe that the testimony has, in fact,
3 satisfied all of the criteria listed in 11:29A, again,
4 with the exception of the administrative claims referred
5 to 11:29A-9. Therefore, I am going to grant the motion
6 to confirm the plan on all bases, with the exception of
7 the treatment of the Class 3 allowed priority claims.

8 What I'm going to ask that the debtor in
9 possession do is amend that portion of the plan which
10 relates to the Class 3 allowed priority claims to, as
11 proposed here in court, include the claims of the Ohio
12 Department of Revenue, and the Internal Revenue Service.

13 To the extent that those are allowed after
14 hearing on any objections to those claims, and that's my
15 way of saying that it's all of our understanding that the
16 plan will proceed to pay those claims, only if they are,
17 in fact, allowed after a hearing. But I'm asking that
18 the plan be amended to include them now, ahead of any
19 hearing on those objections.

20 I will allow the debtor in possession to
21 solicit objections to that change, under the negative
22 notice procedure that we use here. I'd ask that the
23 creditors be given 21 days to object.

24 If there is no objection within that 21-day
25 period, Mr. Howell, if you will submit to me an order

1 confirming the plan as amended, I will sign that,
2 assuming that I also have something either from you, or
3 Ms. Schneider, or both, indicating to me that any fees
4 due and owing as of whatever date that may be have been
5 paid and are current. If all of that verbiage makes
6 sense.

7 So I'm assuming that, at some point, if there's
8 no objection to the change with regard to the Class 3
9 creditors, that Mr. Howell and Ms. Schneider are going to
10 get in touch with me and say, you know, we haven't had an
11 objection, and the fees are paid, and so we're good to
12 go.

13 Does that solve --

14 MR. HOWELL: I think it does.

15 THE COURT: -- sort of the problem with regard
16 to the claims, barring any disallowance or allowance
17 thereof?

18 MR. HOWELL: More than sort of, Judge, but I
19 guess what -- what is derived from today's hearing? Is
20 there a piece of paper or an order that you want me to
21 submit at this point?

22 THE COURT: No. No, I think as of today's
23 date, we'll reflect in the minutes, that I approved the
24 plan with the exception of the treatment of the Class 3
25 creditors, that the plan's going to be amended in that

1 respect only, and that assuming there are no objections
2 to that amendment, I will approve the plan by order, upon
3 being notified that there are no objections, and being
4 notified that the fees have been paid. So, no, I don't
5 expect any paper today.

6 MR. HOWELL: As to the hold back of \$27,500,
7 will the Court minutes reflect that the debtor is to do
8 so until such time as the Ohio claim is resolved?

9 THE COURT: Yes. I'm asking that \$27,500 be
10 retained in the trust account of Whyte Hirschboeck for
11 the purposes of having those funds available until such
12 time as that claim has been resolved, and the minutes
13 will indicate that as well.

14 All right. Mr. Howell, what else do we need to
15 do today?

16 MR. HOWELL: Other than turning it back to Ms.
17 Schneider, relative to her motion to convert, the debtor
18 has no other proceedings before this Court.

19 THE COURT: Thank you.

20 Mr. Steuer, anything further on behalf of A.E.
21 Wease with regard to today's proceeding?

22 MR. STEUER: No. I would just urge Ms.
23 Schneider to comply with her expression earlier that if
24 the plan gets confirmed, she would withdraw the motion.

25 THE COURT: I have a feeling Ms. Schneider

1 doesn't want to fight this battle if she doesn't have to.

2 Ms. Schneider?

3 MS. SCHNEIDER: That's right, Your Honor. I
4 withdraw our motion to convert.

5 THE COURT: Okay.

6 The record will show, and the minutes will
7 reflect that the United States Trustee has withdrawn its
8 motion to convert Fisca -- the Fisca Oil Co. matter, and
9 so I won't do anything further other than issue the
10 minutes, until such time that I hear that there has been
11 no objection to the amendment that we've discussed with
12 regard to the plan. And at that point in time, assuming
13 there's been no objection -- and I can imagine that there
14 wouldn't be much ground for it, I will sign the order.

15 And then, in the meantime, obviously, we'll
16 deal with the bases for the objections to those two
17 claims, at the July hearing, which may end up making all
18 of this a belt and suspenders, but I don't know. I
19 haven't reviewed those objections, other than what Mr.
20 Howell has said in court today. I don't know what the
21 bases for them are, so we'll cross that bridge when we
22 get to it.

23 MR. HOWELL: Thank you, Your Honor.

24 THE COURT: Thank you all.

25 MR. STEUER: Thank you, Your Honor.

1 MS. SCHNEIDER: Thank you.

2 THE COURT: Thank you very much.

3 Congratulations, I think. I'm hoping.

4 All right.

5 (Proceedings concluded at 4:08 p.m.)

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